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STUDENT NOTES

EVIDENCE: THE TAKING OF DOCUMENTS AND ARTICLES TO THE JURY ROOM

The old common law concerning the taking of documents to the jury room was that writings under seal, which had been received in evidence, could be taken to the jury room with the jury when they retired for deliberation, but that other writings could not be taken.¹ This rule has been so modified and changed both by decision and statute in this country that the problem therefore arises as to just what documents and articles should go to the jury room with the jury?

There seem to be a number of variations in the rule as we find it in the different states and in the federal courts. A number of states have statute or code provisions which govern decisions in those states;² and the federal courts seem to have taken a definite stand upon the matter by saying that all articles and documents introduced in evidence may go to the jury room in the discretion of the court.³

A number of courts held that documents and articles introduced in evidence and used by witnesses in the case may go to the jury room with the jury.⁴ Many courts modify the above rule by saying that whether such documents and articles introduced in evidence go to the jury room is a matter which is in the discretion of the court.⁵ One court has said that articles in evidence in a criminal case may not go to the jury room unless the parties to

¹6 WIGMORE, EVIDENCE (3d ed. 1940) Sec. 1913.

²Three such statutes are: Illinois, which has a statute provision, ILL. REV. STAT. (1937) Chap. 110, Sec. 191; Kentucky, which has a code provision, KY. CRIM. CODE (1938) Sec. 248; and New York, which has a code provision, NEW YORK CODE OF CRIM. PRO. (Thompson, 1939) Chap. 442, Secs. 425, 426.

³Goins v. U. S., 99 F. (2d) 147 (C. C. A. 4, 1938).

⁴Burton v. State, 115 Ala. 1, 22 So. 585 (1897); State Bank of Tabor v. Brewer, 100 Iowa 576, 69 N. W. 1011 (1897); Barker v. Incorporated Town of Perry, 67 Iowa 146, 25 N. W. 100 (1885); see Tabor v. Judd, 62 N. H. 288 (1882); People v. Hughson, 154 N. Y. 153, 47 N. E. 1092 (1897).

⁵Goins v. U. S., 99 F. (2d) 147 (C. C. A. 4, 1938); Colvin v. Commonwealth, 247 Ky. 480, 57 S. W. (2d) 487 (1933); Sizemore v. Commonwealth, 189 Ky. 46, 224 S. W. 637 (1920); Higgins v. Los Angeles Gas and Electric Co., 159 Cal. 651, 115 Pac. 313 (1911); see Sawyer v. Garcelon, 63 Me. 25 (1874); Sweeney v. Adam Groth Co., 269 Mich. 436, 257 N. W. 855 (1934); Gable v. Rauch, 50 S. C. 95, 27 S. E. 555 (1897); State v. Shaw, 73 Vt. 149, 50 Atl. 863 (1901).

the suit consent,⁶ while another court has said that it is the duty of counsel to see that the proper documents are taken to the jury room.⁷

Noted in the decisions as an exception to the general rule that papers and articles in evidence may go to the jury room in the discretion of the court, is the ruling of a number of the courts that depositions may not go to the jury room.⁸ One court has held that dying declarations are essentially the same as depositions and therefore they may not go to the jury room.⁹ Yet another variation is the holding that papers in civil cases may go to the jury room while those introduced in criminal cases may not.¹⁰

Is one of these holdings, or perhaps even an entirely new one better than the others? Let us consider briefly the reasons why papers and articles are sent to the jury room. It is a jury's duty to decide the guilt or liability of the defendant. In order to do this in a fair and sound manner it is essential that it should have at its disposal all of the relevant material that it is possible for it to have in order that it may find and understand all of the facts of the case.

Documents and articles may be sounder, more reliable evidence than the oral testimony of witnesses. Why should the jury consider the value of such evidence only in the presence of the court? What harm can come from permitting the jury to take such evidence to the jury room where they may quietly consider the weight that is to be given to it? Just because evidence is in writing, or in physical form, does not mean that the jury must give it the greatest weight. As one court has said, the weight to be given the evidence will be determined by the jury.¹¹

In one instance a court held that papers and articles introduced in the case could not go to the jury room since there were over two hundred exhibits.¹² It seems to this writer that the number of documents and articles in evidence should not have

⁶ *People v. Hughson*, 154 N. Y. 153, 47 N. E. 1092 (1897).

⁷ *Tabor v. Judd*, 62 N. H. 288 (1882).

⁸ *Gray v. Penn. R. Co.*, 3 W. W. Harr. 459, 139 Atl. 66 (Del., 1927); *Welch v. Ins. Co.*, 23 W. Va. 288 (1883).

⁹ *State v. Moody*, 18 Wash. 165, 51 Pac. 356 (1897) (statute provision as to depositions).

¹⁰ *Dunn v. People*, 172 Ill. 582, 50 N. E. 137 (1898).

¹¹ *Burton v. State*, 115 Ala. 1, 22 So. 585 (1897).

¹² *Sweeney v. Adam Groth Co.*, 269 Mich. 436, 257 N. W. 855 (1934).

any effect upon the question. The court should allow only those documents which are relevant to be introduced, and if all papers and articles are relevant, then they should all go to the jury room to aid the jury in its decision upon the case. There also seems to be little or no reason to distinguish between civil and criminal cases.¹³ However, there may be sound reasoning behind the rule which prohibits depositions from going to the jury room. They are not documents or exhibits in the strict sense of the word, but are, rather, merely the testimony of witnesses not present at the trial. Looking at them as such it would seem to be illogical to send them to the jury room and not also permit the testimony of the other witnesses to go in the form in which it would be found in the records of the court.

Then lastly we have the question: Why should the court be granted discretion in this matter? It is generally held, in that group which allows the court to exercise its discretion, that the parties to the suit may not complain unless the court has abused its discretion.¹⁴ On the other hand it has been held that the delivery of papers, not in evidence, to the jury for their consideration will avoid the verdict, unless such papers are not prejudicial to the defeated party.¹⁵ It would seem that if the papers and articles were not relevant they should not have been introduced; and if they were relevant, then the jury needs them in a proper determination of its case.

For these numerous reasons this writer believes that the best rule would be to permit all documents and articles introduced in evidence to go to the jury room when the jury retires.

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¹³ The reason behind the forbidding of documents and articles to go to the jury room in criminal cases was that such evidence amounted to a defendant being forced to testify against himself. *People v. Clark*, 301 Ill. 428, 134 N. E. 95 (1922).

¹⁴ *Sweeney v. Adam Groth Co.*, 269 Mich. 436, 257 N. W. 855 (1934); *Chitwood v. Philadelphia and R. Ry. Co.*, 226 Pa. 435, 109 Atl. 645 (1920); *Starke v. Wolfe*, 90 Wis. 434, 63 N. W. 755 (1895).

¹⁵ *Altshuler v. Exceller Chemical Co.*, 46 N. Y. S. (2d) 28 (1943).